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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/721,723	11/25/2003	Michael P. Corcoran	C516.12-0005	5761
164 7590 04/03/2007 KINNEY & LANGE, P.A. THE KINNEY & LANGE BUILDING 312 SOUTH THIRD STREET MINNEAPOLIS, MN 55415-1002			EXAMINER TRUONG, KEVIN THAO	
			ART UNIT 3734	PAPER NUMBER
SHORTENED STATUTORY PERIOD OF RESPONSE 3 MONTHS		MAIL DATE 04/03/2007	DELIVERY MODE PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/721,723

Applicant(s)

CORCORAN ET AL.

Examiner

Kevin T. Truong

Art Unit

3734

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Election 03/26/2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-52 is/are pending in the application.
- 4a) Of the above claim(s) 49-52 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-48 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 1/04/2/04.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-48, drawn to an occlusion device, classified in class 606, subclass 151.
- II. Claims 49-52, drawn to a method of occluding a left atrial appendage, classified in class 128, subclass 898.

The inventions are distinct, each from the other because of the following reasons:

2. Inventions I and II are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product. See MPEP § 806.05(h). In the instant case the product as claimed can be used in a materially different process of using that product such as dissecting tissues along blood vessel during surgical procedure.

3. During a telephone conversation with David Fairbain on 03/26/2007 a provisional election was made without traverse to prosecute the invention of Group I, claims 1-48.

Affirmation of this election must be made by applicant in replying to this Office action.

Claims 49-52 are withdrawn from further consideration by the examiner, 37

CFR 1.142(b), as being drawn to a non-elected invention.

4. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one

or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Claim Rejections - 35 USC § 112

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 26-48 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

A series of singular dependent claims is permissible in which a dependent claim refers to a preceding claim which, in turn, refers to another preceding claim. For example some of the dependent claims are depend from themselves.

A claim, which depends from a dependent claim, should not be separated by any claim, which does not also depend from said dependent claim. It should be kept in mind that a dependent claim may refer to any preceding independent claim. In general, applicant's sequence will not be changed. See MPEP § 608.01(n).

Claim Rejections - 35 USC § 102

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 1, 2, 6-14, 37, 38, and 41-48 are reject under U.S.C. 102(b) as being anticiapted by Maahs (U.S. 5,846,260).

Note in figures 8 and 11 of Maahs, an occlusion device (70) comprises a plurality of ribs (72) extending from the proximal end of the center post (62) to the distal end of the center post (62); and a foam sheet (82) attached to the plurality of ribs (72,75. A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 3, 4, 39, and 40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Maahs (U.S. 5,846,260) in view of Tanner et al. (U.S. 6,635,066).

Maahs discloses the claimed invention, as state above except for the center post comprises a first segment including a pin and second segment including a lumen for engaging the pin of the first segment.

Tanner et al teaches in figure 2A, that it is known in the surgical art to have center post (10) comprises a first segment (22) including a pin and second segment (11) including a lumen for engaging the pin of the first segment.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the Maahs center post by substituting for the center post having a first segment (22) including a pin and second segment (11) including a lumen for engaging the pin of the first segment as taught by Tanner et al. in order to permits expansion of the vessel necks and/or ends without negatively impacting the connection between the graft and the vessel wall.

11. Claims 5, 15-17, 20-27, and 30-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Maahs (U.S. 5,846,260) in view of Corcoran et al. (U.S. 6,635,066).

Maahs discloses the claimed invention, as state above except for the center post comprises a plurality of holes through which the ribs attach.

Corcoran et al teaches in figures 2 and 15, that it is known in the surgical art to have the center post comprises a plurality of holes through which the ribs passing through the holes.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to make the Maahs center post with holes located at its ends to which the ribs can be passed through as taught by Corcoran so that it is less likely to be sheared off or permanently linked since the edges of the hole are beveled or rounded.

12. Claims 18, 19, 28, and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Maahs (U.S. 5,846,260) in view of Corcoran et al. (U.S. 6,635,066) and further in view of Tanner et al. (U.S. 6,635,066).

Maahs discloses the claimed invention, as state above except for the center post comprises a plurality of holes through which the ribs attach and the center post comprises a first segment including a pin and second segment including a lumen for engaging the pin of the first segment.

Corcoran et al teaches in figures 2 and 15, that it is known in the surgical art to have the center post comprises a plurality of holes through which the ribs passing through the holes.

Tanner et al teaches in figure 2A, that it is known in the surgical art to have center post (10) comprises a first segment (22) including a pin and second segment (11) including a lumen for engaging the pin of the first segment.


It would have been obvious to one of ordinary skill in the art at the time the invention was made to make the Maahs center post with holes located at its ends to which the ribs can be passed through as taught by Corcoran so that it is less likely to be sheared off or permanently linked since the edges of the hole are beveled or rounded and furthermore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the Maahs center post by substituting for the center post having a first segment (22) including a pin and second segment (11) including a lumen for engaging the pin of the first segment as taught by Tanner et al. in order to permits expansion of

the vessel necks and/or ends without negatively impacting the connection between the graft and the vessel wall.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kevin T. Truong whose telephone number is 571-272-4705. The examiner can normally be reached on Monday-Thursday from 8:00 AM to 6:00 PM..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Hayes can be reached on 571-272-4959. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Kevin T. Truong
Primary Examiner
Art Unit 3734

ktt